IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Crl.L.P..No. 297 of 2007()

---

ST.984/2004 of CHIEF JUDICIAL MAGISTRATE COURT,KOTTAYAM

.....

PETITIONER/COMPLAINANT:

---

K.V. VISWANATHAN,
KUNNATHUKALATHIL GINO BHAVAN, THEKKUMGOPURAM,
KOTTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER,
MR.V.N.SIVADAS, VADAKKEDATHU HOUSE, S.H.MOUNT P.O.
KOTTAYAM.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

RESPONDENTS: ACCUSED & STATE:

---

1. C.N. VISWANATHAN,
CHAMACKALAYIL, PEROOR VILLAGE, ETTUMANOOR P.O.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED -R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.THANKAPPAN, J.**

---

**CRL. L.P. NO.297 OF 2007**

---

Dated this the 12th day of June, 2007

**O R D E R**

This petition for special leave to appeal is filed against the judgment in S.T. No.984 of 2004 on the file of the Chief Judicial Magistrate's Court, Kottayam.

2. The case of the complainant before the court below was that the accused - first respondent herein borrowed from him an amount of Rs.3,00,000/- and issued Ext.P2 cheque bearing No.313271 dated 21.6.2004 towards discharge of the said liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. When the amount was not repaid, the petitioner after complying with the statutory provisions regarding intimation of dishonour of the cheque, notice etc. filed the complaint. To prove the case against the first respondent, the power of attorney holder of the petitioner was examined as PW.1 and Exts.P1 to P10 were produced. On closing the evidence of the complainant, the accused was questioned

under Section 313 Cr.P.C. Denying the allegations in the complaint, the accused stated that he was a subscriber to a chitty conducted by the appellant and that when he prized the said chitty, he had given a blank signed cheque to the petitioner as security and that the same was now misused by the petitioner for filing the complaint. To prove his case, the first respondent himself was examined as DW.1 and the Manager of the drawee bank was examined as DW.2 and Exts.D1 to D4 were produced. After considering the entire evidence, the trial court found that the complainant failed to prove that the cheque in question was issued in discharge of a legally enforceable debt as stated in the complaint and acquitted the accused.

3. Heard the learned counsel appearing for the petitioner and perused the records made available before this Court.

4. Though the specific case set up by the petitioner was that the first respondent had borrowed from him an amount of Rs.3,00,000/- and issued Ext.P2 cheque in discharge of the said liability, the petitioner had not proved his case by adducing any independent evidence. The trial court after considering the evidence found that the evidence adduced by the accused was more acceptable to show that the cheque in question was

issued as security in connection with the chitty conducted by the complainant. The trial court also considered the evidence of DW.2 on this aspect. On going through the impugned judgment, this Court is of the view that the finding entered by the trial court is perfectly justifiable and hence the impugned judgment requires no interference.

The Crl. L.P. is accordingly dismissed.

**(K.THANKAPPAN, JUDGE)**

**sp/**